



25 Sigourney Street  
Hartford CT 06106-5032

STATE OF CONNECTICUT  
DEPARTMENT OF REVENUE SERVICES

**SN 2005(12)**

**SPECIAL NOTICE**

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## Nonresident Contractor Bonds and Deposits

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**Purpose:** This Special Notice describes the procedures to furnish a guarantee or cash bond or withhold payment in connection with a contract with nonresident real property contractors.

Legislation passed in 2005 changes the requirements for posting security to ensure a nonresident contractor pays all Connecticut taxes by requiring nonresident contractors and persons doing business with nonresident contractors to use one of three options:

1. A nonresident contractor may furnish the Department of Revenue Services (DRS) a guarantee bond for 5% of the total contract price; **or**
2. A nonresident contractor may furnish DRS a cash bond for 5% of the total contract price; **or**
3. Persons doing business with nonresident contractors must withhold 5% of the total contract price and deposit it with DRS.

Regardless of the option chosen, the nonresident contractor must have completed and submitted **Form REG-1, Business Taxes Registration Application**, to register with DRS and must have been issued a Connecticut Tax Registration Number.

In addition, this legislation applies to all contracts with nonresident contractors, regardless of the tax-exempt status of the property owner, except that owners or tenants of residential real property, as defined in this document, are excluded from the requirements of Conn. Gen. Stat. § 12-430(7).

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**Effective Date:** Effective for contracts entered into on and after October 1, 2005. Therefore, contracts with nonresident contractors executed on or after October 1, 2005, are subject to the rules described in this Special Notice.

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**Statutory and Regulatory Authority:** Conn. Gen. Stat. §12-430(7) as amended by 2005 Conn. Pub. Acts 260, §6; Conn. Agencies Regs. § 12-430(7)-1.

**Definitions:**

**Nonresident contractor** means a contractor who does not maintain a regular place of business in Connecticut.

**Regular place of business** means:

- Any bona fide office, factory, warehouse, or other space in Connecticut at which a contractor is doing business in its own name in a regular and systematic manner; **and**
- Which place is continuously maintained, occupied, and used by the contractor in carrying on its business through its employees regularly in attendance to carry on the contractor's business in the contractor's own name.

A regular place of business **does not include:**

- A place of business for a statutory agent for service of process or a temporary office whether or not it is located at the site of construction;
- Locations used by the contractor only for the duration of the contract, such as short-term leased offices, warehouses, storage facilities, or facilities that do not have full time staff with regular business hours; **or**
- An office maintained, occupied, and used by a person affiliated with a contractor.

**Contract price** means the total contract price, including deposits, amounts held as retainage, costs for any change orders, or charges for add-ons.

**Person doing business with a nonresident contractor** (referred to below as customer) means **any** person who makes payments of the contract price to a nonresident contractor, and includes, but is not limited to property owners, governmental, charitable or religious entities, and resident or nonresident general contractors or subcontractors. An owner or tenant of residential real property is not a person doing business with a nonresident contractor and is not required to comply with the provisions of Conn. Gen. Stat. §12-430(7). However, the nonresident contractor doing business

with the owner or tenant must comply with the bond requirements under Conn. Gen. Stat. §12-430(7)(F).

**Commencement of the contract** means the time when the nonresident contractor signs the contract, but, in any event, occurs no later than when the work under the contract actually starts. If a change order is made after the commencement of the original contract, the change order commences when it is signed by the nonresident contractor, but, in any event, occurs no later than when the work under the change order actually starts.

**Completion of the contract** means the time when the nonresident contractor makes the final periodic billing for the contract. The final periodic billing may be due before payment of any retainage becomes due. If a change order is made after the final periodic billing for the original contract, the change order is complete when the nonresident contractor bills for the change order.

**Residential real property** means real property used exclusively for residential purposes and consisting of three or fewer dwelling units in one of which the owner or tenant resides.

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**Guarantee Bond:** A nonresident contractor has the option of filing a guarantee bond with DRS instead of a cash bond or the customer withholding 5% of the contract price and paying it over as a deposit to DRS (described below). Under this option, the nonresident contractor has 120 days from the commencement of the contract or 30 days after the completion of the contract, whichever is earlier, to file a guarantee bond with DRS. DRS has issued **Form AU-766, Guarantee Bond**, which must be used to post a bond.

If the deadline for the customer to withhold and remit a deposit to DRS is before the deadline for the nonresident contractor to post a bond, DRS will accept the earlier of the deposit or the bond.

If the nonresident contractor files a guarantee bond with DRS, DRS will issue a Certificate of Compliance to the nonresident contractor, which when provided by the contractor to its customer, relieves the customer of liability to withhold and remit to DRS a deposit for the amount bonded from the contractor. It also relieves the customer of liability for all state taxes arising from the activities of the nonresident contractor on the project for which the bond was provided.

However, the filing of a guarantee bond by the nonresident contractor does not relieve the customer of the customer's liability for use taxes due on purchases of services from the nonresident contractor.

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**Cash Bond:** A nonresident contractor has the option of filing a cash bond with DRS instead of a guarantee bond as described above, or the customer withholding 5% of the contract price and paying it over to DRS as described below. Under this option, the nonresident contractor has 120 days from the commencement of the contract or 30 days after the completion of the contract, whichever is earlier, to file a cash bond with DRS. DRS has issued **Form AU-72, Cash Bond**, which must be used to post a bond.

If the deadline for the customer to withhold and remit a deposit to DRS is before the deadline for the nonresident contractor to post a bond, DRS will accept the earlier of the deposit or the bond.

If the nonresident contractor files a cash bond with DRS, DRS will issue a Certificate of Compliance to the nonresident contractor, which when provided by the contractor to its customer, relieves the customer of liability to withhold and remit to DRS a deposit for the amount bonded from the contractor. It also relieves the customer of liability for all state taxes arising from the activities of the nonresident contractor on the project for which the bond was provided.

However, the filing of a cash bond by the nonresident contractor does not relieve the customer of the customer's liability for use taxes due on purchases of services from the nonresident contractor.

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**Depositing a Withheld Payment:** If a nonresident contractor does not provide the customer with a Certificate of Compliance, as described above, within 120 days from the commencement of the contract or 30 days after the completion of the contract, whichever is earlier, the customer must withhold from any payment of the contract price an amount of 5% of the payment. The amount withheld must be remitted as a deposit to DRS by the last day of the month following the calendar quarter that follows the calendar quarter in which the first payment to the nonresident contractor is made and every calendar quarter thereafter.

**Example:** The customer makes the first payment to a nonresident contractor on February 15. That calendar quarter ends on March 31 and the following quarter ends on June 30. Therefore, the customer must make the first deposit to DRS by July 31.

DRS will issue guidance on the procedures for a customer of a nonresident contractor to follow if a Certificate of Compliance has not been furnished to the customer within the deadline described above. Guidance will be issued before April 30, 2006.

Direct payment permit holders must continue to self-assess use tax on all materials and supplies installed or permanently placed in a renovation construction project and on the renovation labor for the project. See **Informational Publication 2004(7)**, *Q & A on the Connecticut Direct Payment Permit Program*.

When a customer of a nonresident contractor deposits a withheld amount with DRS, the customer is not liable for any claim of the nonresident contractor for the amount or for any claim of DRS for any taxes of the nonresident contractor arising from the activities of the nonresident contractor on the project for which the amounts were paid over, subject to verification of the final total contract price, the timeliness of the deposit, and that all deposits made by the customer total 5% of the final total contract price. However, payments of withheld amounts do not relieve the customer of the customer's liability for use taxes due on purchases of services from the nonresident contractor.

The amount withheld from the nonresident contractor is a special fund in trust for the State of Connecticut. If the customer fails to make a timely deposit of the withheld amount, the customer will be jointly and severally liable for any taxes due the State of Connecticut arising from the contract with the nonresident contractor and may face civil or criminal prosecution, or both. For example, if the customer remits a withheld amount to DRS after the time limit described above, the nonresident contractor may request a return of the deposit, but the customer remains liable for any unsatisfied Connecticut tax liability of the nonresident contractor arising from the project for which the deposit was made. The nonresident contractor's tax liability includes sales and use taxes, withholding tax, personal income tax, corporation business tax, motor fuels tax, business entity tax, and any other applicable Connecticut taxes arising from the project for which the deposit was made. A customer that fails to withhold and timely remit a deposit may be held responsible for any liability related to these taxes, which may exceed 5% of the total contract price.

**Release of Bond or Claim for Deposited Amount by Nonresident Contractor:** A nonresident contractor must request, in writing, that DRS audit the records of the contractor for a project for which a bond was filed with DRS or an amount was withheld and deposited. The nonresident contractor must have filed all Connecticut tax returns due during the term of the contract and must have all applicable records available for inspection by DRS. DRS must receive the request for the bond release or withheld amount within three years after the date of final payment to DRS of amounts withheld and deposited or within three years from the last day of the month succeeding the reporting period in which the nonresident contractor filed a bond for the contract price. To determine whether the deposit may be returned to the nonresident contractor or the nonresident contractor's bond released, the statute of limitations for any returns due from the contractor during the term of the contract remains open.

After receiving a written request, DRS will conduct an audit of the nonresident contractor and issue either a Certificate of No Tax Due or a Certificate of Tax Due.

Not later than 90 days after the issuance of a Certificate of No Tax Due, DRS will release the bond or return the deposited amount to the nonresident contractor, as the case may be. Not later than 90 days after issuance of a Certificate of Tax Due, DRS may return to the nonresident contractor the amount by which the amounts deducted and withheld and paid over to DRS or the amount of the cash bond, as the case may be, exceed the amount of taxes set forth in the certificate or otherwise owed to the State of Connecticut together with the interest and penalties then assessed. Where a guarantee bond was posted and the nonresident contractor is found to be liable for unpaid Connecticut taxes after the contractor's appeal rights have been exhausted, DRS may call the bond.

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**Effect on Other Documents:** This Special Notice modifies and supersedes **Special Notice 2003(20)**, *Legislation Affecting Contracts with Nonresident Contractors*, and **Informational Publication 2004(29)**, *Building Contractors' Guide to Sales and Use Taxes*, to the extent it discusses contractor bonds.

**Effect of This Document:** A Special Notice announces a new policy or practice in response to changes in State or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by DRS.

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**For Further Information:** Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (in-state), or
- **860-297-5962** (from anywhere)

**TTY, TDD, and Text Telephone users only** may transmit inquiries anytime by calling 860-297-4911.

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**Forms and Publications:** Forms and publications are available anytime by:

- **Internet:** Preview and download forms and publications from the DRS Web site at **[www.ct.gov/DRS](http://www.ct.gov/DRS)**
  - **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu. Only forms (not publications) are available through TAX-FAX.
  - **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (in-state) and select **Option 2** from a touch-tone phone.
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**Paperless Filing Methods (fast, easy, free, and confidential):**

- **For business returns:** Use ***Fast-File*** to file sales and use taxes, business use tax, room occupancy tax, estimated corporation business tax, business entity tax, or withholding tax returns over the Internet. Visit the DRS Web site at **[www.ct.gov/DRS](http://www.ct.gov/DRS)** and click on ***File/Register OnLine***.
  - **For resident income tax returns:** Use ***WebFile*** to file personal income tax returns over the Internet. Visit the DRS Web site at **[www.ct.gov/DRS](http://www.ct.gov/DRS)** and click on ***File/Register OnLine***.
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